



PUBLIC NOTICE

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DA 07-3507
August 2, 2007

DOMESTIC 214 AUTHORIZATION GRANTED

Application Filed for the Transfer of Control of
Maskina Communications from Transcom Holdings, LLC to **MAILED**
Vyke AS and Vyke Communications, PLC

WC Docket No. 05-299

AUG 7 - 2007

FCC PUBLIC NOTICE

By the Chief, Wireline Competition Bureau:

On October 19, 2005, Maskina Communications, Inc. ("Maskina Communications") filed an application, pursuant to sections 63.03 and 63.04 of the Commission's rules,¹ requesting approval of the transfer of control, consummated on December 2, 2004, of Maskina Communications from Transcom Holdings, Inc. to an entity then-known as Maskina AS (now known as Vyke AS).² Additionally, on June 27, 2005, an entity then-known as Tower PLC (now Vyke Communications, PLC) acquired 100% of the shares of Maskina AS, and therefore, a 100% indirect interest in Maskina Communications (Maskina Communications, Vyke AS, and Vyke Communications, PLC will be referred to collectively as "Applicants").³ Applicants assert that the transfer of control consummated on June 27, 2005 was *pro forma* under the Commission's rules, because the ultimate ownership or control with respect to Maskina Communications was held, both before and after that transfer, by the same group of shareholders.⁴ Applicants did not seek Commission consent prior to these transfers of control.⁵ On January 3, 2006,

¹ 47 C.F.R §§ 63.03, 63.04; see 47 U.S.C. § 214.

² See Maskina AS, Transferee, Transcom Holdings, LLC, Transferor, Domestic Application For Consent to Transfer Control of a Domestic Carrier, WC Docket No. 05-299 (filed Oct. 19, 2005) ("Application"), at n.1 and pp. 4-5. See also *Domestic Section 214 Application Filed for the Transfer of Control of Maskina Communications from Transcom Holdings, LLC to Vyke AS and Vyke Communications, PLC*, WC Docket No. 05-299, Public Notice, DA 07-2948 (rel. July 2, 2007) (*Maskina Domestic PN*).

³ Applicants have also filed applications for transfer of control associated with authorization for international services. Any action on this domestic 214 transaction is without prejudice to Commission action on other related, pending applications.

⁴ See *Maskina Domestic PN* at n.4.

⁵ Applicants have been providing service to their customers under Special Temporary Authority originally granted by the Bureau on February 13, 2006 and subsequently extended twice. See *Maskina Domestic PN* at n.5. Action on this domestic section 214 application does not preclude or prejudice any enforcement action related to an unauthorized transfer of control.

Applicants submitted a supplement to the original application, clarifying certain issues in response to queries from Commission staff.⁶

The October 19, 2005 domestic section 214 application was filed after the transactions at issue had been consummated, and involves foreign ownership interests that are subject to review and approval by the Department of Homeland Security (DHS), with the concurrence of the Department of Justice (DoJ) and the Federal Bureau of Investigation (FBI) (collectively, the Executive Branch Agencies). Consequently, Applicants and the Executive Branch Agencies negotiated an agreement resolving any potential national security, law enforcement, and public safety issues raised by the application, and filed notice to that effect in this docket on June 28, 2007.⁷ The Petition to Adopt Conditions advises the Commission that the Executive Branch Agencies have no objection to the Commission granting the transfer of control application at issue in this docket, provided that the Commission conditions its consent on compliance by Vyke AS with the commitments set forth in the June 14, 2007 Commitment Letter ("Commitment Letter") attached to the Petition to Adopt Conditions.⁸ The Commission subsequently released a public notice accepting the application for non-streamlined processing on July 2, 2007,⁹ and received no comments on this transaction.

The Wireline Competition Bureau finds, upon consideration of the record, that grant of the application, subject to Vyke AS abiding by the commitments and undertakings contained in the Commitment Letter, will serve the public interest, convenience, and necessity. Applicants and their affiliates have less than a 10 percent market share in the interstate, interexchange marketplace, provide competitive telephone exchange services or exchange access services (if at all) exclusively in areas served by dominant local exchange carriers that are not parties to the proposed transaction, and are not dominant with respect to any domestic service.

Consistent with Commission precedent, the Wireline Competition Bureau accords the appropriate level of deference to the Executive Branch Agencies' expertise on national security and law enforcement issues.¹⁰ Therefore, pursuant to section 214 of the Communications Act of 1934, as amended, 47 U.S.C.

⁶ See Letter from Thomas K. Crowe and Greg E. Kunkle, Counsel for Maskina Communications, Inc., to Marlene Dortch, Secretary, Federal Communications Commission, Re: WC 05-299, Supplement to Application for Consent to Transfer Control of Domestic 214 (filed January 3, 2006).

⁷ See Maskina Communications, Inc. f/k/a Transcom Communications, Inc., Transferor, and Vyke AS f/k/a Maskina AS, Transferee, Application for Consent to Transfer of Control, Petition to Adopt Conditions to Authorizations and Licenses, WC Docket No. 05-299 ("Petition to Adopt Conditions") (filed June 28, 2007).

⁸ *Id.*

⁹ See *Maskina Domestic PN*.

¹⁰ The Commission considers national security, law enforcement, foreign policy, and trade policy concerns when analyzing a transfer of control or assignment application in which foreign ownership is an issue. See *Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Satellites Providing Domestic and International Service in the United States*, Report and Order, 12 FCC Rcd 24094, 24170-72, paras. 178-82 (1997); *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23919-21, paras. 61-66 (1997) ("*Foreign Participation Order*"), Order on Reconsideration, 15 FCC Rcd 18158 (2000). In assessing the public interest, the Commission considers the record and accords the appropriate level of deference to Executive Branch expertise on national security and law enforcement issues. See *Foreign Participation Order*, 12 FCC Rcd at 23919-21, paras. 61-66.

§ 214, and section 0.291 of the Commission's rules,¹¹ the Wireline Competition Bureau hereby grants the application discussed in this Public Notice.

Pursuant to section 1.103 of the Commission's rules, the grant is effective upon release of this Public Notice.¹² Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules may be filed within 30 days of the date of this Public Notice.¹³

For further information, please contact Alex Johns at (202) 418-1167, Competition Policy Division, Wireline Competition Bureau.

¹¹ 47 C.F.R. § 0.291.

¹² See 47 C.F.R. § 1.103.

¹³ See 47 C.F.R. §§ 1.106, 1.115.